IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Bhawani Handloom Industries Panipat Vs. State Bank of Bikaner & Jaipur & Others
(SB Civil Writ Petition No.2616/1998)

SB Civil Writ Petition under Article
226 & 227 of the Constitution of India.

Date of order: November _29, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Paras Kuhad, for the petitioner.

Mr. G.K.Garg, for the respondents.

BY THE COURT:

The prayer of the petitioner in the instant writ petition is as under:-

(a) declare the debt due to the Banks and Financial Institutions Act,1993 (for short `1993 Act') as ultra vires, invalid and void.
(b) declare that the constitution of the Tribunal under Article 323-B is unconstitutional and bad in law.
(c) declare that the order dated February 3, 1997 passed by the tribunal and order dated December 17, 1997 passed by the Appellate Tribunal are without jurisdiction, illegal and void.
(d) declare that the suit/ application filed by the Bank for seeking decree for recovery against the petitioner is not maintainable.
(e) declare that the respondent bank is not entitled to recover

any amount pursuant to the order of the Tribunal dated February 23, 1998 in application No.90/94 and the execution proceedings if initiated be quashed.

(f) to restrain the bank from recovering any amount pursuant to the order dated February 3, 1997 of the Tribunal or order dated December 17, 1997 passed by the Appellate Tribunal from the petitioner and to refund Rs.6 lacs deposited by the petitioner pursuant to the order dated June 9, 1997 of the Appellate Tribunal.

2. Initially the writ petition was filed in the Division Bench but the petitioner did not press the prayer in regard to the constitutional validity of 1993 Act and that is how the matter was placed before the Single Bench.

3. Contextual facts depict that a civil suit for recovery of Rs.13,85,698.15 was filed by the State Bank of Bikaner & Jaipur (for short `Bank') on January 9, 1989 in the court of District Judge Bhilwara under Order 37 Rule 2 CPC. The suit was transferred to the Debts Recovery Tribunal, Jaipur (for short `DRT'). It was interalia pleaded in the suit that M/s. Bhilwara Wooltax, (not the party to the suit) had tendered 40 hundies for different dates for different amount on the defendant Bhawani Handloom Industries during the period December 24, 1985 to September 11, 1986. The hundies were in favour of the Bank. The amounts under the hundies were payable after the particular period. The hundies were accepted by the defendant. Instead of accepting the hundies the defendant refused to pay the amount of hundies amounting to Rs.11,98,134.20. On addition of interest @ 6% per annum the Bank demanded a sum of Rs.13,85,635.15 from the defendant. Since the defendant did not make payment of the said hundies

Joginder Pal Singh, Advocate presented the said hundies as notary public to the defendant on May 16, 1987 for payment. The defendant refused to make payment hence protest notes were prepared by the Notary Public. The contention of the Bank was that the defendant being acceptor of the hundies was liable to make payment along with interest @ 6% per annum. M/s. Bhilwara Wooltax Ltd. Bhilwara was wound up vide order dated August 10, 1990 in Company Petition No.12/88. The Official Liquidator filed application bearing No.35/93 against the defendant firm claiming that a sum of Rs.97,845.24 was due from the defendant. The defendant filed reply and denied the allegations of M/s.Bhilwara Wooltax Ltd. and submitted that no hundies were ever accepted for payment by defendant firm. The application of the Official Liquidator was dismissed and the further proceedings against M/s.Bhawani Handlooms were dropped.

4. The defendants filed written statement and resisted the claim. It was denied that hundies were ever accepted. According to the defendants the hundies were accepted by one Surendra Kumar, who was neither the partner nor the agent of the defendants. A prayer was made to dismiss the suit.

5. The DRT vide judgment dated February 3, 1997 allowed the claim of the Bank against the defendant for a sum of Rs.13,85,635.15 along with the cost of the suit and future interest @ 6% per annum from the date of filing of the suit till realization.

6. The appeal preferred against the finding of DRT was dismissed by Debts Recovery Appellate Tribunal Mumbai (for short `DRAT') on December 17, 1997.

7. Against these concurrent judgments that the petitioner has filed the instant writ petition.

8. It is contended by the learned counsel for the petitioner that impugned orders of DRT and DRAT are without jurisdiction, void and not executable against the petitioner. The suit filed by the Bank was based on hundies which were drawn by M/s.Bhilwara Wooltax Ltd. in favour of the Bank. There was no privity of contract between the parties to the suit. As per section 30 of the Negotiable Instruments Act,1881 the drawer of the Bill of Exchange (Hundi) is bound in case of dishonour by the Drawee or acceptor thereof to compensate the holder. Thus the case was not for recovery of the debt. As per Sections 3 and 17 of the 1993 Act the Tribunal has been constituted for the purpose of recovery of debts and not for adjudication of claim.

Learned counsel also contended that according to observation of DRT the persons who had allegedly accepted the hundies were neither of the petitioner firm nor were authorised to accept the said hundies. The DRT has wrongly observed that petitioner never ratified by implications the Act of unauthorised agents viz.Surinder Kumar, Pawan Kumar and Ashwini Kumar since no such case was set up by the Bank in its pleadings. The Tribunal ought to have held that the claim filed by the Bank suffered from non-joinder of necessary party as M/s.Bhilwara Wooltax was not joined as party. The provisions of Section 196 have wrongly been interpreted by the Tribunal. The respondent Bank had failed to file its claim in reply to company petition in respect of liquidation of M/s.Bhilwara Wooltax Ltd. The claim of the Bank was outside the scope of definition of debts provided in Section 2(g) of the 1993 Act. The cause of action, if any, had arisen at

Patiala and therefore the original suit filed by bank at Bhilwara was not maintainable because of territorial jurisdiction. No liability could be fastened on the petitioner on account of acceptance of hundies by Surendra Kumar, Pawan Kumar and Ashwini Kumar who were merely agents of Bhilwara Wooltax Ltd. Thus the finding of DRT and DRAT about the ratification was not correct. The letter dated January 4, 1989 had not been properly construed.

9. I have given my thoughtful consideration to the submissions advanced before me.

10. It is well settled that while deciding a petition for a writ of certiorari, it is not open to the High Court to give a judgment substituting its own order for that of those which are under challenge. The High Court does not act as a court of appeal while deciding with a writ of certiorari. Proceedings by way of certiorari are not `of course'. The High Court can refuse the writ if it is satisfied that there was no failure of justice. The essential feature of a writ of certiorari is not appellate jurisdiction and the High Court will not in the exercise of its function under Article 227 of the Constitution, construe evidence and re-open findings of facts. In Sadhana Lodh Vs. National Insurance Co. Ltd. (2003)3 SCC 524, their Lordships of Supreme Court defined the supervisory jurisdiction under Article 227 of the Constitution of India as under:-

> “The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the

> High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

11. In the instant case, I find that DRT and DRAT have acted within their parameters. The prayer of petitioner to construe evidence and re-open findings of facts can not be accepted. I do not find it a fit case to invoke Article 227 of the Constitution.

12. For these reasons, the writ petition being devoid of merit stands dismissed without any order as to costs.

(Shiv Kumar Sharma),J.

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